IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5335 OF 2005

Dattatraya Shivram Matele .. Petitioner

Vs.

Govind Shivram Matele and Ors. .. Respondents

Mr.A.P.Vanarse for the petitioner

Mr.T.D.Deshmukh for respondent no.1, 4(a) and 4(b)

CORAM : S.U.KAMDAR, J
DATED : 29TH NOVEMBER, 2005

P.C.:

1. By the present petition, the impugned order dt.15.6.05 is under challenge wherein the learned trial court has refused to condone the delay of 153 days for setting aside the ex-parte decree. Reasons given in the application is sickness and that there was delay in filing written statement. The learned trial court has come to the conclusion that there is no ground made out for delay. After considering the matter on merits I find that it is necessary to interfere with the impugned order and petitioner defendant be given a chance to be heard on merits. The dispute is essentially between the

brothers and suit is for partition.

2. Keeping in mind the aforesaid position I set aside the order dt.15.6.05 passed in Misc.Application no.558 of 2002 and condone the delay in taking out the application for setting aside the ex-parte decree. Trial court is directed to decide the application for setting aside the ex-parte decree on merits.

3. Delay in filing an appeal is condoned. District Court, Pune is directed to decide the pending appeal against ex-parte decree passed in trial court expeditiously and on its own merits. Appeal to be heard by 31.12.05. Petitioner to pay cost of the present petition as well as the application before the appellate court quantified at Rs.3000/-. Cost to be paid within three weeks. Petition disposed of accordingly. No order as to costs.